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June 8, 2001
EXECUTIVE SECRETARY

David Waddell
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37215

Re: *Rulemaking to Amend Slamming Rules*
Docket 00-00983

Dear David:

Enclosed please find the original and thirteen copies of the comments of the Southeastern Competitive Carriers Association and XO Tennessee, Inc. in the above-captioned proceeding. Please call with any questions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: *Henry Walker by wlm*
Henry Walker *w/permission*

HW/wlm

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re: *Rulemaking to Amend Slamming Rules*
 Docket 00-00983

**COMMENTS OF THE SOUTHEASTERN COMPETITIVE CARRIERS
ASSOCIATION AND XO TENNESSEE, INC.**

The Southeastern Competitive Carriers Association (SECCA), XO Tennessee, Inc. (XO), MCI WorldCom (MCI WorldCom), AT&T Communications of the South Central States, Inc. (AT&T), and Time Warner Telecom of the MidSouth, L.P. (Time Warner) (collectively "the parties") submitted comments January 19, 2001, concerning the TRA's proposed amendments to Rule 1220-4-2-.56, Verification of Orders for Changes of Long Distance Carriers. The parties recommended that rules promulgated by the TRA should mirror, as closely as possible, the Federal Communications Commission's (FCC) requirements.

When the parties filed comments in January, the FCC had not yet concluded its proceeding to establish rules for transfers of customer bases, although it had established a process to do that. On May 15, 2001, the FCC released its first set of rules addressing carrier-to-carrier sales or transfers of customer bases.¹ The FCC concluded that the rules "will protect the interests of the affected subscribers, consistent with section 258 and our rules, by giving them adequate advance notice of the carrier change and ensuring that the change will not cause them financial harm."²

The parties applaud the TRA's efforts to modify the proposed rules to mirror

¹ *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Charges; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Charges*, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129 (rel. May 15, 2001).

² *Id.* Para. 1.

those issued recently by the FCC. As a result, the parties propose only two minor changes to the TRA's proposed criteria for compliance with the TRA's carrier change authorization and verification rules:

1220-4-2-.56(2)(d)(2). A notification letter, pre-approved by the Authority, is mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customer no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

Parties' Comments: Under the FCC's revised rules, not later than 30 days before the planned carrier change, an acquiring carrier must notify the FCC of its intention to acquire the subscriber base and must certify that it is complying with the required procedures, including the provision of advance written notice to all affected subscribers. The acquiring carrier must file a letter under FCC Docket No. 00-257 with the Secretary of the Commission. The letter must include the names of the carriers, the types of telecommunications services provided to the affected subscribers, the date of the transfer of these subscribers to the acquiring carrier, a certification of compliance with the requirements of the transfer process and a copy of the notice that the carriers are sending to the affected subscribers.³

Although the parties believe the rule, as proposed above, is intended to mean that the notification letter required by the FCC is also adequate for notification in Tennessee, the phrase "pre-approved by the Authority" may indicate that even the FCC letter requires additional pre-approval from the TRA. The parties request that the rule be modified to clarify the Authority's intent. For example, the rule could state that a "notification letter which meets the requirements of the FCC does not require approval by the Authority."

1220-4-2-.56(2)(d)(4). The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Parties' Comments: The FCC declined "to require the acquiring carrier to continue to charge affected subscribers the same rates as those charged by the selling or transferring carrier for a specified period after the transfer."⁴ Further, the FCC stated:

"We believe that such a requirement is unnecessary because the information the affected subscribers will receive in the 30-day advance subscriber notice about the acquiring carrier's rates, terms, and conditions for the telecommunications services at issue, coupled with the reminder of their right to select a different carrier, will enable them to make an informed decision about who their carrier should be and the rates they pay for these services, consistent with the goals of section 258."⁵

The parties also believe the information the affected subscribers will receive in the 30-day advance subscriber notice will be sufficient notice of any rate change. Further, the parties believe the advance notice will give customers ample opportunity to change to a competing carrier if the customer finds the acquiring carrier's rates, terms and conditions unsatisfactory. With this in mind, the parties request the TRA to modify Rule 1220-4-2-.56(2)(d)(2) to require only a 30-day written notice of the acquisition and rate change that would occur as the customer is transferred from the acquired carrier to the acquiring carrier. The FCC has deemed this sufficient notice, and the parties request the TRA to modify its proposed rule to mirror the FCC's decision. This adjustment will also avoid any preemption issues if a carrier elects to raise rates

4 Id. Para. 24
5 Id.

as permitted by the FCC but in violation of the TRA's rules.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 8th day of June, 2001.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St.
Suite 2101
Nashville, TN 37201-3300

Henry Walker by wpm
Henry Walker w/permission